

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

DANIEL R. HUBBARD, III,

Plaintiff,  
v.

CASE NO. 11-11140  
HON. MARIANNE O. BATTANI

COMMISSIONER OF SOCIAL  
SECURITY,

Defendant.  
\_\_\_\_\_ /

**OPINION AND ORDER ADOPTING REPORT AND RECOMMENDATION  
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND  
GRANTING PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT AND REMANDING FOR FURTHER REVIEW**

Plaintiff Daniel Hubbard, III, brings this action pursuant to 42 U.S.C. § 405(g), challenging the final decision of the Commissioner denying his application for disability insurance benefits (DIB) under Title II of the Social Security Act, 42 U.S.C. § 423. The case was referred to Magistrate Judge Michael Hluchaniuk pursuant to 28 U.S.C. § 636. Both parties filed dispositive motions, and in a Report and Recommendation ("R&R") dated February 27, 2012, Magistrate Judge Hluchaniuk recommended that Defendant's Motion for Summary Judgment be denied, that Plaintiff's Motion for Summary Judgment be granted, that the Commissioner's findings be reversed, and that the matter be remanded to the administrative law judge for further review.

In his Report and Recommendation, the Magistrate Judge informed the parties that objections to the R&R needed to be filed within fourteen days of service and that a party's failure to file objections would waive any further right of appeal. (R&R at 19). Neither party

filed an objection. Because no objection has been filed in this case, the parties waived their right to *de novo* review and appeal.

Accordingly, the Court **ADOPTS** the Magistrate Judge's recommendation, **DENIES** Defendant's Motion for Summary Judgment, **GRANTS** Plaintiff's Motion for Summary Judgment, and **REVERSES** the Commissioner's findings. This matter is hereby **REMANDED** to the administrative law judge for determination of the "number of unscheduled bathroom breaks that Plaintiff needs, if any, and whether, in light of those findings, Plaintiff is able to work." (R&R at 17). Further, in accordance with the R&R, Plaintiff "should submit a specific medical opinion on any functional restrictions or limitations caused by his chronic diarrhea, including the need for, and frequency of, any unscheduled bathroom breaks during a typical eight-hour work day." (*Id.*) Finally, in his R&R, Magistrate Judge Hluchaniuk recommended clarification as to any "record evidence contradicting" the diagnosis of "functional bowel disorder" and the "extent to which the diagnosis, which is based on reported symptoms and patient history, along with ruling out other causes for the symptoms" affected the credibility determination.

Accordingly, the Court **REMANDS** this matter to the Commissioner pursuant to sentence four of 42 U.S.C. § 405(g) for further proceedings consistent with this Opinion and Order.

**IT IS SO ORDERED.**

s/Marianne O. Battani  
HON. MARIANNE O. BATTANI  
UNITED STATES DISTRICT JUDGE

DATE: March 14, 2012

**CERTIFICATE OF SERVICE**

Copies of this Opinion and Order were served upon counsel of record on this date by e-filing and/or ordinary mail.

s/Bernadette M. Thebolt  
Case Manager